Double Patenting

Claims 1-25 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of copending Application No. 09/074,681. Applicant respectfully submits that the amendments to the claims overcome this provisional rejection of the claims over the claims of copending Application No. 09/074,681 and that the claims of the instant application are patentably distinct from those of copending Application No. 09/074,681. The claims of the copending application do not teach saving the custom playlist to a memory in order to create a virtual CD capable of being modified upon demand.

Claim Rejections – 35 USC §102 and §103

Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Douma et al. (U.S. Patent 5,990,884). Claims 2-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Douma et al. applied to claim 1 in view of Montoya et al. Applicant respectfully traverses these rejections of the claims.

The present invention provides a "virtual CD" and the advantages attendant thereto. In the present invention, data is received from an external source, such as from the Internet (claims 6) or from the digital audio/visual actuator device (claim 3), the data is used to create a custom playlist (claims 2-9), and the custom playlist is saved as a virtual CD in non-volatile memory (claim 15) that is capable of being dynamically changed (modified) at will (claims 9, 16-20 and 24-25). It is this ability to dynamically modify the virtual CD that gives the present invention its flexibility and power. As discussed at page 6, lines 4-14, of the specification, once the custom playlist is created and saved to non-volatile memory, it can be easily modified by adding, deleting or rearranging tracks of the virtual CD. The Examiner is further directed to page 15, line 11, to page 13, line 13, for more discussion in the specification about this point. Moreover, the specification, at page 5, lines 10-12, and page 10, lines 3-5, discusses the advantages of saving the custom playlist to non-volatile memory so that it is permanently available to the user.

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2   Applicant respectfully submits that the Douma and Montoya references,

3 whether considered together or singly, do not teach these aspects of the present

4 invention. The Douma reference discusses providing data about a CD (not a

5 playlist) through an information download from the Internet. For instance, the

6 reference discusses that CD information such as the name of a track, category,

7 artist, track name, etc. about the CD may be downloaded. It is important to note,

8 particularly with regards to Applicant's claim 10, that this information is not a playlist

9 file. The Douma reference does not go beyond describing how information about a

10 CD can be obtained through the Internet and, indeed, does not teach, disclose, or

11 suggest saving the created custom playlist as a virtual CD, capable of being

12 dynamically modified, in non-volatile memory of the digital audio/visual actuator

13 device.

14

15   Combining Douma with Montoya does not cure this defect, and, indeed,

16 Applicant respectfully submits that the teaching of Montoya explicitly teach away

17 from the virtual CD concept. Consider first the purpose of Montoya-to sell custom

18 (actual) CDs containing tracks selected by users. Montoya explicitly teaches

19 manufacture of a custom CD based upon choices made by a user; it is important to

20 note that this CD is an actual, physical CD that, by definition, is not modifiable and is

21 certainly not a virtual CD. According to the implementation described in Montoya, a

22 user can choose songs at a kiosk and the kiosk will generate an actual CD

23 containing your selections; in this sense, the CD generated in Montoya is a

24 customized CD. But again, this CD is not a virtual CD and is not modifiable on

25 demand. The physically embodied CD selected by the user in the Montoya CD

26 cannot be modified. In order to modify a playlist, the user will have to select a new

27 playlist and have that burned into a new, actual CD. The playlist is never saved in

28 Montoya since this reference is explicitly concerned with burning a physical CD

29 based upon user selection(s). It is clear that the Montoya reference teaches away

30 from the concept of saving a custom playlist as a virtual CD in non-volatile memory.

31 Thus, even if one were to combine the Douma and Montoya references, the result

1 would not the claimed invention. The result would also not suggest or in any way
2 render obvious the claimed invention.

3

4 Applicant has amended independent claim 1 to better claim these distinctions
5 between the present invention and the Douma and Montoya references, whether
6 considered separately or together, by placing the recitation of claim 15 into claim 1
7 and by calling this saved custom playlist a "virtual CD" as done in the specification.
8 As previously discussed, neither reference discusses the concept or implementation
9 of a virtual CD stored in non-volatile memory of an A/V actuator device, and the
10 advantages attendant thereto.

11

12 Applicant offers the additional comments about the pending claims. With
13 regard to claims 17 and 25, neither of the cited references teach, disclose, suggest
14 nor otherwise render obvious the concept of saving a modified custom playlist.
15 Again, Douma does not download playlist information (but instead downloads CD
16 track information) and Montoya teaches away from modifying playlists and so
17 certainly does not teach or suggest saving modified playlists.

18

19 With regard to claims 16 and 24, concerned with modifying a custom playlist
20 to create a modified custom playlist, the advantages of being able to modify a virtual
21 CD are many. The custom playlist can be rearranged to "shuffle play" the virtual CD;
22 tracks can be added/deleted at will. As previously discussed, Montoya cannot
23 modify its CD playlist; in order to obtain a CD having different selections, the user
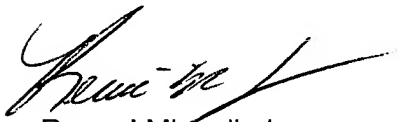24 will have to choose different selections to the kiosk and wait for a new CD to be
25 burned.

26

27 With regard to claim 10, this claim is directed to the occasion where a user
28 can download (such as over the Internet) and save a playlist created by someone
29 else. It is not directed to creating a playlist. This might occur if an Internet server or
30 provider knows the musical tastes of a user, for instance, and a virtual VJ (video
31 jockey) can e-mail a playlist calculated to appeal to a user's tastes. The user can
32 select to download this custom playlist and manipulate it as desired by modifying it.

Also with regard to claim 10, it is noted that the Examiner refers to Douma as teaching downloading a playlist file. This is not an accurate reading of Douma. As previously discussed, the Douma reference downloads data about a particular CD (such as track name, number, category, artist, etc.), not playlist information. For this reason, Douma fails to teach the recitations of the claim.

Applicant believes that the foregoing remarks overcome the rejection of the claim over the Douma and Montoya reference, whether considered singly or together. Reconsideration and allowance of these claims are respectfully requested at the Examiner's earliest convenience.

Respectfully submitted,

Renee' Michelle Larson
Reg. No. 36,193
Larson & Associates, P.C.
221 E. Church Street
Frederick, Maryland 21701
301-668-3073
Attorney for Applicant(s)